



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
[REDACTED]
CCO/167809

PRELIMINARY RECITALS

Pursuant to a petition filed August 03, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a telephonic hearing was held on September 01, 2015, at Milwaukee, Wisconsin.

The petitioners, [REDACTED] [REDACTED], and her husband, [REDACTED] [REDACTED] (married 12-18-2013), agreed to the consolidation of their five cases so that those cases were addressed during the September 1, 2015 hearings in the following cases: a) [REDACTED] [REDACTED] in FOO-167814, FOP-167808, and **CCO-167809**; and b) [REDACTED] [REDACTED] in FOP-167810 and CCO-167811. Attorney [REDACTED] submitted a September 4, 2015 detailed closing argument regarding the two Child Care cases of petitioner and her husband. Neither [REDACTED] [REDACTED] nor [REDACTED] [REDACTED] submitted any responsive closing argument to DHA.

The issue for determination is whether the Department is correctly seeking recovery of a Child Care (CC) overpayment of \$12,691 from December 7, 2014 to May 31, 2015, due to failure to timely report that [REDACTED] [REDACTED] was married to [REDACTED] [REDACTED], her husband in the household and his income, and a two parent household not both employed or in approved CC activities during the overpayment period.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: Attorney [REDACTED] [REDACTED]
Office of Legal Counsel
Department of Children And Families
201 East Washington Avenue, Rm G200
Madison, WI 53708-8916

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
 Division of Hearings and Appeals

FINDINGS OF FACT

1. [REDACTED] [REDACTED] is a resident of Milwaukee County who resided with her three children at [REDACTED] [REDACTED] Milwaukee, WI [REDACTED]. Exhibit 5.
2. The father of petitioner's three children is [REDACTED] [REDACTED]. He was released from prison on December 10, 2013.
3. The petitioner married [REDACTED] [REDACTED] on December 18, 2013. Exhibit I.
4. As of December, 2013, the petitioner and her husband were claiming separate and Child Care (CC) benefits in petitioner's Cares # [REDACTED] and [REDACTED] [REDACTED]'s Care # [REDACTED].
5. During the child care overpayment period of December 7, 2014 to May 31, 2015, [REDACTED] [REDACTED] and [REDACTED] [REDACTED] have used only the address of [REDACTED] Milwaukee WI [REDACTED] as their legal residence and mailing address. Exhibit 5.
6. The petitioner and Mr. [REDACTED] failed to timely report to the agency their December 18, 2013 marriage, and failed to timely report that they were residing together since his release from incarceration on December 10, 2013.
7. [REDACTED] [REDACTED] failed to report in his reviews of December, 2013, June, 2014, and December, 2014 that he resided with his wife and his income.
8. [REDACTED] [REDACTED] failed to report in her reviews of September, 2013, February, 2014, and July, 2014 and January, 2015 that her husband resided in her household and his income.
9. During May, 2015, the Office of the Inspector General discovered that petitioner failed to report accurate household composition (her husband in her residence) and his employment/income since. OIG also discovered that petitioner incorrectly received Caretaker Supplement (CTS) benefits that she was ineligible to receive due to Mr. [REDACTED] residing in her home.
10. Neither petitioner nor [REDACTED] [REDACTED] timely reported to the agency that Mr. [REDACTED] had the following employment: a) Pace Industries – April 28, 2014 to November 21, 2014; b) QPS Employment Group during December, 2014 and February, 2015; and c) Seek Careers Staffing – March 25, 2015 to April, 17, 2015.
11. The following evidence supported that [REDACTED] [REDACTED] resided in the petitioner's household since his December 10, 2013 release from incarceration: a) many petitioner postings on her Facebook page that her husband was residing with her household; b) statements the petitioner and her husband made on a television show called, "the Steve Wilkos Show" regarding residing together during the period in question; c) employment payroll records for Mr. [REDACTED] which indicate the petitioner's home address; d) employment verification and day care records which indicate they had the same home phone number for their emergency contact; and e) their marriage certificate which confirmed their marriage on December 18, 2013.
12. [REDACTED] [REDACTED] applied for public benefits on December 2, 2014 and falsely stated that she was single, and never married. She stated in that application that [REDACTED] [REDACTED] was an absent parent. She electronically signed the application which certifying that her answers were correct and complete to the best of her knowledge. Exhibit R-6, pp. 1-9.
13. Due to her application for child care benefits, [REDACTED] [REDACTED] was authorized to receive 30 hours per week of child care for her three children as of December 7, 2014 paid by the Wisconsin Shares Program. Exhibit R-6, pp.10-26.

14. MECA investigated and determined that the petitioners had been overpaid child care benefits, based both upon when one or both parents were not working or in an otherwise approved activity and therefore available to care for their children, and on the income of both parents (not just Ms. [REDACTED] income. Exhibit R-3; Exhibit R-5, pp. 11-62.
15. The Department established the accuracy of the petitioners' child care overpayment in a detailed spreadsheet as Exhibit R-2.
16. The Department sent to both [REDACTED] [REDACTED], Sr. and [REDACTED] [REDACTED] July 15, 2015 Child Care Overpayment Notices which stated that they were overpaid child care in the amount of \$12,691 from the period of December 7, 2014 to May 31, 2015. That notice also indicated that both parents are liable due to joint and severable liability, as the child care payments were issued for children in their common household group. Exhibit R-1.

DISCUSSION

Wis. Stat., §49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in Wis. Stat., §49.155, and thus they are within the parameters of §49.195(3). Recovery of child care overpayments also is mandated in the Wis. Admin. Code, §DCF 101.23. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment. Wis. Admin. Code, §DCF 101.23(1)(g). Recovery must occur even if the error was made by the agency.

A parent is eligible for child care services if she needs the care to attend Wisconsin Works (W-2) approved school, to work, or to participate in W-2 activities. Wis. Stat., §49.155(1m)(a); Child Day Care Manual, §§1.4.8 and 1.5.0. If both parents are in the household both must be working or attending W-2 activities. Wis. Admin. Code, §DCF 101.26(1). The agency shall recover child care payments if the authorized payments would have been less because the parent was absent from an approved activity while the child was in care. Child Day Care Manual, Chapter 2, §2.1.5.1.

The issue in this appeal is whether the Department is correctly seeking recovery of a Child Care (CC) overpayment of \$12,691 from December 7, 2014 to May 31, 2015, due to failure to timely report that [REDACTED] [REDACTED] was married to [REDACTED] [REDACTED], her husband in the household and his income resulting in a two parent household not both eligible for CC benefits because not in approved child care activities.

It makes no difference as to whether the overpayment was caused by the county agency or the client since the recovery of the overpayment is required, regardless of fault. Wis. Stat., §49.195(3), provides that the agency must determine if an overpayment has occurred under §49.155, and the agency must seek recovery of the overpayment. There is no exception for situations where the agency's error caused the overpayment. As with welfare programs such as Food Stamps and the former Aid to Families with Dependent Children, an overpayment must generally be recovered even if it was caused by agency error.

This is also reflected in the applicable overpayment rule, Wisconsin Administrative Code §12.23(1)(g), (3)(a), which states in pertinent part:

DWD 12.23 Recovery of overpayments. (1) DEFINITIONS. In this section:

...

(g) "Overpayment" or "debt" means any benefit or payment received under s.49.148, 49.155, 49.157, or 49.19, Stats., in an amount greater than the amount that the individual, AFDC assistance group, or W-2 group was eligible to receive under applicable statutes and rules, regardless of the reason for the overpayment. An overpayment may be result of client error, administrative error, or intentional program violation.

...

(2) OVERPAYMENT DETERMINATION AND NOTICE. (a) A county ... shall determine whether an overpayment has been made under s.49.148, 49.155, 49.157, or 49.19, Stats., and if so, the amount of the overpayment. ...

(3) LIABILITY. (a) Liability shall extend to any parent, non-marital coparent, or stepparent whose family receives benefits under s.49.148, 49.155, 49.157 or 49.19, Stats., during the period that he or she is an adult member of the same household, but his or her liability is limited to such period. ...

DCF 101.23 Recovery of overpayments. (1) DEFINITIONS. In this section:

...

(g) "Overpayment" or "debt" means any benefit or payment received under s.49.148, 49.155, 49.157, or 49.19, Stats., in an amount greater than the amount that the individual, AFDC assistance group, or W-2 group was eligible to receive under applicable statutes and rules, regardless of the reason for the overpayment. An overpayment may be result of client error, administrative error, or intentional program violation.

The Child Care Manual states there are 3 types of overpayments:

2.3.1 Client Overpayments

Agencies administering child care shall take all steps necessary to recoup or recover, from the parent, funds paid to the child care provider when the parent was not eligible for the level of benefits paid.

There are 3 types of overpayments:

1. **Client/Provider Error. The client or provider report incorrect information or fail to report information. Intentional Program Violation is not established.**

2. Administrative Error. Overpayment results from agency or system error. The agency commits an error or the system calculates an authorization or payment amount for more than the client was entitled. Can only recover 12 months prior to discovery of the overpayment. The original Overpayment Notice date is the date of discovery.

3. **Intentional Program Violation.** The client or provider willfully reports information or fail to report information in order to receive more benefits, and as a result is found guilty of IPV by the court, ...

(Emphasis added).

In this case, the county agency proved by the preponderance of the evidence that the basis for the overpayments was client error. The Department correctly determined that [REDACTED] [REDACTED] and [REDACTED] failed to timely report to the agency that they were married on December 18, 2013, that Mr. [REDACTED] resided with Ms. [REDACTED] in her household and his employment and income. As a result, only Ms. [REDACTED] income was considered by the agency, and it was presumed that her children needed child care at

all times Ms. [REDACTED] was working. However, both Ms. [REDACTED] and Mr. [REDACTED] each had an obligation to care for their young children anytime one of them was not working (or travelling to or from work). Moreover, both Ms. [REDACTED] and Mr. [REDACTED]'s income should have been included in calculating their household income available for child care. His income had not been used to determine her CC eligibility which, in part, gave rise to the CC overpayment. The Department correctly determined that the petitioners were incorrectly awarded total CC benefits of \$12,691 during the period of December 7, 2014 to May 31, 2015 because the petitioners failed to establish that as a two parent household each petitioner was either employed or in an approved child care activity to be eligible for CC benefits.

JOINT AND SEVERAL LIABILITY.

When two adults and their minor child-in-common reside together, regulations require that they be treated as one Child Care (CC) household. *Manual*, §1.2.0, "Family" definition. In cases where an overpayment of Child Care Benefits may have occurred, the county agency is required to determine whether or not an overpayment has been made and to recover the overpayment from the household that received it, *Wis. Admin. Code* §DWD 12.23(2)(a). Liability for repayment is joint and several as to **any parent or non-marital co-parent** for the time that he or she is living in the household, *Wis. Admin. Code* §DWD 12.23(3). The agency is required to recover overpayments whether they are the result of client error, administrative error or intentional program violation, *Wis. Admin. Code* §DWD 12.23(1)(g). Mr. [REDACTED] is a marital co-parent of all three children with the petitioner. Therefore, the liability for the child care overpayment which benefited more than one person is **joint and several liability**, meaning that [REDACTED] [REDACTED] and [REDACTED] [REDACTED] are both liable for the full amount, *Wis. Admin. Code* §DWD 12.23(3)(b) and *Wis. Admin. Code* §DWD 12.23(3)(a).

During the September 1, 2015 hearing, the Department clearly established with its witnesses ([REDACTED] [REDACTED] and her supervisor, [REDACTED] [REDACTED]) and its extensive exhibit notebook (Exhibits R-1 through R-8) that the petitioners received Child Care overpayments. During the hearing, [REDACTED] [REDACTED] did not testify in her own defense. [REDACTED] [REDACTED] testified, but his testimony was not persuasive or credible. Mr. [REDACTED] alleged that he "stayed" with various relatives and used his wife's address as only a mailing address. However, he was unable to name any of those relatives, and did not provide any addresses for those relatives. Furthermore, Mr. [REDACTED] did not pay child support to Ms. [REDACTED] which would have been required if he actually was an absent father in a family receiving public assistance. This ALJ did not find Mr. [REDACTED]'s testimony credible.

[REDACTED] [REDACTED] was unable to provide any reliable evidence to refute the county's case. During the September 1, 2015 hearing, neither petitioner were able to present any reliable evidence to refute or undermine in any significant way the county's substantial, reliable testimony or evidence that [REDACTED] [REDACTED] resided with [REDACTED] [REDACTED] and their children during the entire CC overpayment period.

Neither [REDACTED] [REDACTED] nor [REDACTED] [REDACTED] contested that her household had received CC benefits during the periods of December 7, 2014 to May 31, 2015. Furthermore, neither petitioner were able to offer any reliable evidence to refute the accuracy of the county agency's CC overpayment determinations. Nevertheless, petitioner contended that it was unfair that the county agency was seeking to recover the CC overpayment. However, controlling federal regulation requires establishment of a claim against a household for a CC overpayment regardless of whose error caused the overpayment to occur. Accordingly, for the above reasons, I must conclude that the Department is correctly seeking recovery of a Child Care (CC) overpayment of \$12,691 from December 7, 2014 to May 31, 2015, due to failure to timely report that [REDACTED] [REDACTED] was married to [REDACTED] [REDACTED], her husband resided in the household and his income, and that as the two parent household were not both employed or in approved CC activities to be eligible for CC benefits during the overpayment period.

CONCLUSIONS OF LAW

The Department is correctly seeking recovery of a Child Care (CC) overpayment of \$12,691 from December 7, 2014 to May 31, 2015, due to failure to timely report that [REDACTED] [REDACTED] was married to [REDACTED] [REDACTED], her husband resided in the household and his income, and the two parent household were not both employed or in approved CC activities to be eligible for CC benefits during the overpayment period.

THEREFORE, it is

ORDERED

The petition for review herein be and the same is hereby Dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 4th day of December, 2015

\sGary M. Wolkstein
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 4, 2015.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit
Child Care Fraud
Attorney [REDACTED]